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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION, a government-sponsored  
entity; FEDERAL HOUSING FINANCE  
AGENCY, as Conservator of Fannie Mae,

Plaintiffs,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada  
Limited Liability Company; SUN CITY  
ALIANTE COMMUNITY ASSOCIATION;  
DOES I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: 2:14-cv-02046-JAD-PAL

**PLAINTIFFS' NOTICE OF NEW  
AUTHORITIES**

1 Plaintiffs respectfully notify the Court of four recent decisions by another court in this  
 2 District that support their brief in opposition to Defendant SFR Investment Pool 1, LLC's motion  
 3 to dismiss in this case (Dkt. Nos. 32, 41.)

4 In the four recent decisions, Chief Judge Navarro resolved in favor of FHFA, Freddie  
 5 Mac, and Fannie Mae all of the principal issues that are presented in the pending motion to  
 6 dismiss in this case. *See Skylights v. Byron*, No. 2:15-cv-0043-GMN-VCF, 2015 WL 3887061  
 7 (D. Nev. June 24, 2015); *Elmer v. Fed. Home Loan Mortg. Corp.*, No. 2:14-cv-01999-GMN-  
 8 NJK, 2015 WL 4393051 (D. Nev. July 13, 2015); *Premier One Holdings, Inc. v. Fed. Nat'l*  
 9 *Mortg. Ass'n*, No. 2:14-cv-02128-GMN-NJK, 2015 WL 4276169 (D. Nev. July 13, 2015);  
 10 *Williston Investment Grp., LLC v. JP Morgan Chase Bank, NA*, No. 2:14-cv-02038-GMN-PAL,  
 11 2015 WL 4276144 (D. Nev. July 13, 2015). The *Skylights* decision, issued first, addressed and  
 12 resolved virtually all of the issues presented in this case, while the latter three opinions applied  
 13 the court's reasoning in *Skylights* to circumstances where, prior to the relevant HOA sale, the  
 14 Enterprise had ownership of the loan and deed of trust but had not yet been formally assigned the  
 15 deed of trust in a recorded instrument.

16 *First*, Chief Judge Navarro held that the Federal Foreclosure Bar expressly preempts the  
 17 application of the State Foreclosure Statute under materially the same facts as in this case. *See*  
 18 *Skylights*, 2015 WL 3887061, at \*6; Pls.' Opp. at 4-5. In applying the Federal Foreclosure Bar in  
 19 *Skylights*, the court ruled that all of the "adverse actions" prohibited by the Bar "could otherwise  
 20 be imposed on FHFA's property under state law. Accordingly, Congress's creation of these  
 21 protections clearly manifests its intent to displace state law." *Skylights*, 2015 WL 3887061, at  
 22 \*6. This ruling directly rejects SFR's contrary argument. *See Reply* at 12.

23 *Second*, Chief Judge Navarro rejected the contention, also advanced by SFR here, that the  
 24 application of the Federal Foreclosure Bar deprives purchasers at HOA sales of property without  
 25 due process. *See Skylights*, 2015 WL 3887061, at \*6-7 & n.4; MTD at 4-9, Reply at 1-11. That  
 26 is because "the protections of 12 U.S.C. § 4617(j)(3) were already in effect at the time of sales,"  
 27 so the entities who purchased properties at the HOA foreclosure sales "all purchased real  
 28 property subject to FHFA's lienhold interest." *Id.* at \*7 n.4.

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1           *Third*, Chief Judge Navarro considered purchasers’ reliance on *FDIC v. McFarland*, 243  
 2 F.3d 876 (5th Cir.2001), for the principle that the Federal Foreclosure Bar protects the  
 3 Enterprises only from actions taken by governmental taxing authorities, not private entities—a  
 4 contention that SFR also makes here. *See* MTD at 10-11; Reply at 17-18. The court rejected  
 5 that contention, holding that “both the plain language of subsection 4617(j)(3) and the structure  
 6 of section 4617(j) lead ... to the conclusion that FHFA’s exemption from foreclosures without its  
 7 consent applies to private entities as well as state and local taxing authorities.” *Skylights*, 2015  
 8 WL 3887061, at \*8. In so holding, Chief Judge Navarro (1) concluded that the *McFarland*  
 9 analysis rested on features of 12 U.S.C. § 1825(b)(2) that were not relevant to the Federal  
 10 Foreclosure Bar; (2) pointed out the many courts that implicitly disagreed with *McFarland*; and  
 11 (3) noted that *Monrad v. FDIC*, 62 F.3d 1169 (9th Cir.1995), suggests that *McFarland* was  
 12 incorrectly decided. *See Skylights*, 2015 WL 3887061, at \*8-9 & n.6.

13           *Fourth*, Chief Judge Navarro’s rulings confirm that application of the Federal Foreclosure  
 14 Bar to protect the Enterprises’ property against involuntary extinguishment in HOA sales is  
 15 within the statutory powers of the Conservator to “preserve and conserve the assets and property  
 16 of Fannie Mae.” *Id.* at \*11 (quoting 12 U.S.C. § 4617(b)(2)(D)(ii)). Relatedly, Chief Judge  
 17 Navarro held that FHFA’s litigation position does not contradict the Enterprises’ servicing  
 18 guides, which “do[] not carry the force of law and cannot trump congressional legislation.” *Id.* at  
 19 \*9. Thus, the court found unpersuasive the same arguments that SFR makes here. *See* MTD at  
 20 9-10; Reply at 15-17.

21           *Fifth*, the decisions rejected the argument, also made by SFR, that if the HOA lien  
 22 attached prior to the conservatorship, Plaintiffs cannot invoke the protection of the Federal  
 23 Foreclosure Bar. *See Skylights*, 2015 WL 3887061, at \*11; MTD at 11. Even if such liens attach  
 24 before conservatorship, this does “not exempt lien-holders from the FHFA consent requirement,”  
 25 which is required “before FHFA’s property is subject to their foreclosure.” *Skylights*, 2015 WL  
 26 3887061, at \*11.

27           *Finally*, Chief Judge Navarro necessarily rejected a bona fide purchaser argument, similar  
 28 to the one advanced by SFR here, MTD at 10; Reply at 17, that the Federal Foreclosure Bar did  
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not protect the Enterprises' property because purchasers had no notice that the Enterprises had an interest in the property to which the purchasers' took title in an HOA sale or that FHFA had not consented to the extinguishment of that interest. *See, e.g., Opp. to Mot. for Summ. J. at 4-9, Elmer*, No. 2:14-cv-01999-GMN-NJK (Dkt. 71). In those cases where an Enterprise purchased a loan prior to the HOA Sale, but had not yet been assigned the Deed of Trust in a recorded instrument, the court held that those property interests were protected by the Federal Foreclosure Bar. *Elmer*, 2015 WL 4393051, at \*1, 3; *Williston*, 2015 WL 4276144, at \*1, 3; *Premier One*, 2015 WL 4276169, at \*1, 3.

Plaintiffs request that the Court consider *Skylights*, *Elmer*, *Williston*, and *Premier One* in deciding the pending motion to dismiss.

DATED this 27<sup>th</sup> day of July, 2015.

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**CERTIFICATE OF SERVICE**

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the 27<sup>th</sup> day of July, 2015, a true and correct copy of **PLAINTIFFS' NOTICE OF NEW AUTHORITIES**, was transmitted electronically through the Court's e-filing electronic notice system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail.

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